

On August 9, 2003 appellant, then a 38-year-old rural carrier, filed an occupational disease claim alleging that she developed pain in her shoulders and right arm due to factors of her federal employment. The Office accepted that appellant had developed a right shoulder supraspinatus and infraspinatus tendinitis on November 12, 2003. Appellant returned to light-duty work on July 7, 2004.

The Office referred appellant for a second opinion examination on May 27, 2004. In a report dated July 18, 2004, Dr. Don B.W. Miskew, a Board-certified orthopedic surgeon, reported his findings on physical examination and diagnosed cervical disc disease with radiculopathy. He stated, "I feel if she did have a component of shoulder tendinitis that it was mild and is pretty much resolved." Dr. Miskew further stated that appellant's clinical findings correlated with cervical disc disease and that he did not feel that the tendinitis was a significant component of her symptomatology. He noted that he could not definitively state whether the cervical disc disease originated from a work problem or was a process of degeneration. Dr. Miskew recommended work restrictions.

The Office referred this report to Dr. Stacey Younger, a Board-certified neurologist and appellant's attending physician, and requested comments on August 12, 2004. Dr. Younger responded and indicated that she disagreed with Mr. Miskew's findings, stating that she believed appellant had both cervical and shoulder conditions and agreeing that she required work restrictions.

The Office again requested a report from Dr. Younger on August 24, 2004 who responded on September 7, 2004 and indicated that she did not believe that appellant's right shoulder condition had resolved. She further opined that appellant's cervical condition was part of her employment injury due to the repetitive upper extremity work which caused her problem over time.

The Office determined that there was a conflict of medical opinion evidence between Drs. Younger and Miskew and on September 29, 2004 the Office referred appellant, a statement of accepted facts and list of specific questions for a referee examination with Dr. Richard Brennan, a Board-certified orthopedic surgeon. In a report dated October 27, 2004, Dr. Brennan noted that appellant developed a gradual onset of pain and tenderness in June 2003 from the posterior aspect of her neck across both shoulders and down her arms. He noted that appellant had limited range of motion of her neck with complaints of pain. Dr. Brennan diagnosed impingement syndrome and lateral epicondylitis of the right elbow. He stated that results of appellant's objective testing showed a "relative paucity of findings." Dr. Brennan recommended a rheumatoid screening battery and noted that cervical radiculopathy was not confirmed by diagnostic testing. He also stated, "I do not feel that the tendinitis in the right shoulder is a significant component of her pain." Dr. Brennan further opined that appellant did not have or continue to have a work-related condition and stated that appellant was capable of returning to the full duties of her position. However, he noted that appellant should not lift over 25 pounds over her shoulder.

The Office issued a notice of proposed termination of compensation on December 15, 2004 based on Dr. Brennan's report. Appellant's attorney responded on December 17, 2004 and disputed the statement in the accepted facts asserting that appellant had not returned to work.

The Office requested clarification from Dr. Brennan on February 17, 2005. The Office noted that appellant returned to limited-duty work and was working for approximately three months at the time of the initial examination. On March 17, 2005 Dr. Brennan noted receiving the amendment to the statement of accepted facts and stated that he still believed that appellant's

right shoulder tendinitis condition had resolved. He further stated that appellant could return to regular duty including lifting over the shoulder.

By decision dated March 29, 2005, the Office terminated appellant's medical and compensation benefits effective that date on the grounds that Dr. Brennan's report constituted the weight of the medical opinion evidence and established that appellant was no longer disabled and no longer had medical residuals of her accepted condition.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.⁴

The Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁵ The implementing regulation states that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician of an Office medical adviser or consultant, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case.⁶

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background must be given special weight.⁷

¹ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

⁴ *Mary A. Lowe*, *supra* note 2.

⁵ 5 U.S.C. §§ 8101-8193, 8123.

⁶ 20 C.F.R. § 10.321.

⁷ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

ANALYSIS

The Board finds that the Office properly determined that there was a conflict of medical opinion evidence between appellant's attending physician, Dr. Younger, a Board-certified neurologist, and the Office second opinion physician, Dr. Miskew, a Board-certified orthopedic surgeon, regarding appellant's continuing right shoulder condition and her ability to perform her regular duties.⁸

The Office then referred appellant, a statement of accepted facts and a list of specific questions to Dr. Brennan, a Board-certified orthopedic surgeon, for a referee examination. In his initial report dated October 27, 2004, Dr. Brennan found that appellant's right shoulder condition had resolved and opined that appellant could return to full duty.

Appellant's attorney before the Office responded to the pretermination notice and disagreed with the statement of accepted facts. The Office modified the statement of accepted facts to reflect that appellant had returned to limited-duty work and requested a supplemental report from Dr. Brennan. On March 17, 2005 Dr. Brennan reviewed the changes and stated definitively that appellant could return to full duty and that her right shoulder condition had resolved.

The Board finds that Dr. Brennan's report as sufficiently detailed, were ultimately based on a proper factual background and concluded based on his lack of physical findings that appellant's right shoulder condition had resolved with no residuals and no work restrictions. Based on this report, the Office met its burden of proof to terminate appellant's compensation and medical benefits for her accepted right shoulder tendinitis.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits.

⁸ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board